

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF	)	Case No. 3601
	)	
CITY OF KEARNEY	)	
	)	CONSENT ORDER
KEARNEY AREA SOLID WASTE	)	
AGENCY MUNICIPAL SOLID WASTE	)	
LANDFILL	)	
	)	
FID# 62746		

RESPONDENT.

**I. INTRODUCTION**

1. The Nebraska Department of Environment and Energy (NDEE or Department) and the City of Kearney, NE (Respondent) voluntarily enter into this Consent Order. The Consent Order establishes a schedule for Respondent to comply with the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §§ 81-1501 to 81-1532; the Integrated Solid Waste Management Act (ISWMA), Neb. Rev. Stat. §§ 13-2001 to 13-2043; and Neb. Admin. Code, Title 132, *Integrated Solid Waste Management Regulations* (Title 132).

**II. JURISDICTION**

2. NDEE is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 1-1504(1), of exercising exclusive general supervision, administration, and enforcement of NEPA, ISWMA, permits issued under such acts, and all rules and regulations promulgated by the Nebraska Environmental Quality Council (EQC) under such acts, including Title 132.

3. In signing this Consent Order, Respondent agrees to undertake all actions required by this Consent Order. Respondent agrees not to contest the jurisdictional allegations referenced herein in any action to enforce this Consent Order. In signing this Consent Order, Respondent waives



its right to a contested case hearing on this matter as otherwise provided in Neb. Rev. Stat. § 81-1507(2) and § 84-913 of the Administrative Procedure Act, Neb. Rev. Stat. § 84-901 *et seq.*

### **III. PARTIES**

4. Respondent City of Kearney, NE is an incorporated city of the first class as defined in Neb. Rev. Stat. § 16-101 and a "person" as defined in Neb. Rev. Stat. § 81-1502(10).

5. The parties to this Consent Order are NDEE and Respondent City of Kearney, NE. This Consent Order is binding on the Respondent, and all successors and assigns.

### **IV. FINDINGS OF FACT**

6. Respondent owns and operates a municipal solid waste landfill (MSWLF) located at 6711 W. 56<sup>th</sup> Ave in Kearney, NE that has been issued NDEE solid waste management permit number NE0202975 (Permit), most recently reissued by NDEE on January 16, 2019, for a five (5) year permit term.

7. As a condition of issuance, Respondent's "Permit consists of the conditions contained herein, including those in any attachments, any applicable law, including the Nebraska Environmental Protection Act and the Integrated Solid Waste Management Act, and applicable regulations contained in Title 132 – Integrated Solid Waste Management Regulations." Permit NE0202975, page 1 of 3.

8. As a condition of issuance, Respondent's Permit requires that "[t]his solid waste management facility must be operated in accordance with all provisions of the Permittee's Application, which is hereby adopted and incorporated herein by reference." *Id.*

9. As a condition of issuance, Respondent's Permit requires that "[t]he Permittee must inform the NDEQ [now NDEE] of any deviation from or change to the information in the

Application, which affect the Permittee's ability to comply with all applicable laws, regulations, or Permit." *Id.*

10. Pursuant to its authority in Neb. Rev. Stat. §§ 13-2034 and 81-1505(3)(d), the EQC has adopted various rules in Title 132 which regulate landfill operations so that the disposal of municipal solid waste does not cause land, air, or water pollution, as defined in Neb. Rev. Stat. § 81-1502.

11. Under Title 132 regulations, Respondent must, among other requirements:

- a. control and collect windblown litter, as required by Title 132, Chapter 3, 004.03 and 004.17A;
- b. conduct and record a minimum number of random load inspections, as required by Title 132, Chapter 3, 004.06;
- c. cover waste at the end of each operating day with six (6) inches of earthen material or an approved alternative daily cover, as required by Title 132, Chapter 3, 004.17B1;
- d. receive Department approval and demonstrate their effectiveness before using any alternative cover materials, as required by Title 132, Chapter 3, 004.17B2;
- e. deposit solid waste in the smallest practical area, also referred to as the "working face" of the active disposal area of the landfill, as required by Title 132, Chapter 3, 004.17D;
- f. cover any area where wastes will not be disposed for a period of one hundred eighty (180) days or longer with the required daily cover material and an additional twelve (12) inches of intermediate cover, as required by Title 132, Chapter 3, 004.13.

12. In addition to the above regulatory requirements of Title 132, the terms and conditions of Respondent's Permit and incorporated application further require Respondent to:

- a. deploy a tarp over the working face at the end of each working day and ahead of soil cover to be applied when the working face advances and the desired waste lift height is achieved, as required by Part 5.2 of the "Operational Criteria" in the approved MSWLF permit application;
- b. conduct an average of 26 random load inspections per month of operation, as required by Part 5.3.1 of the "Operations Plan" in the approved MSWLF permit application.

13. During an inspection of Respondent's MSWLF conducted on May 22, 2019, NDEE observed waste grain being used as an unapproved daily cover in violation of Title 132, Chapter 3, 004.17B1 and 004.17B2.

14. On July 11, 2019, NDEE sent Respondent a Letter of Warning (LOW) citing a violation for the use of waste grain as an unapproved daily cover.

15. On July 22, 2019, Respondent sent NDEE a written response to the July 11, 2019, LOW in which Respondent acknowledged waste grain "is not an approved form of alternate daily cover" and committed to cover all areas of waste grain with the required thickness of soil.

16. During an inspection of Respondent's MSWLF on June 24, 2021, NDEE observed uncontrolled and uncollected windblown litter on litter fences and surrounding areas in violation of Title 132, Chapter 3, 004.03 and 004.17A2.

17. During inspections of Respondent's MSWLF on June 24, 2021, and June 16, 2022, NDEE observed that Respondent had not conducted and recorded a minimum number of random load inspections in violation of Title 132, Chapter 3, 004.06 and Respondent's Permit.

18. During inspections of Respondent's MSWLF on June 24, 2021, and June 16, 2022, NDEE observed large areas of the active disposal area and working face without adequate daily cover in violation of Title 132, Chapter 3, 004.17B1 and B2.

19. During the June 16, 2022 inspection of Respondent's MSWLF, NDEE documented that the tarp system as approved in Respondent's Permit and as described in Part 5.2 of Respondent's incorporated application had not been used in approximately one year in violation of Title 132, Chapter 3, 004.17B1 and Respondent's Permit.

20. During the June 16, 2022 inspection of Respondent's MSWLF, NDEE observed that Respondent was continuing to use waste grain as an unapproved daily cover and was also using municipal wastewater sludge as an unapproved daily cover in violation of Title 132, Chapter 3, 004.17B2.

21. During inspections of Respondent's MSWLF on June 24, 2021, and June 16, 2022, NDEE observed areas of waste deposition in the active disposal area of the landfill that were well in excess of the smallest practical area in violation of Title 132, Chapter 3, 004.17D. During the June 16, 2022 inspection, NDEE observed waste deposition in three (3) separate areas.

22. During inspections of Respondent's MSWLF on June 24, 2021, and June 16, 2022, NDEE observed large areas outside of the working face that required intermediate cover, but were without intermediate cover in violation of Title 132, Chapter 3, 004.13.

23. NDEE sent Respondent Letters of Non-Compliance (LNCs) on July 12, 2021, and July 19, 2022, citing violations for Respondent's failure to comply with the requirements of Title 132 as listed above.

24. Respondent submitted responses to each of the items in the July 12, 2021, and June 19, 2022, LNCs. The responses were received by NDEE on July 26, 2021, and August 1, 2022, respectively.

25. Given the violations alleged herein, many of which are ongoing or recurring, the NDEE Director is authorized under Neb. Rev. Stat. §§ 81-1504(25) and 81-1507(1) to require and enforce compliance schedules when a violation of NEPA, ISWMA, or Title 132 has occurred.

#### **V. COMPLIANCE ORDER**

26. Effective immediately, Respondent agrees to the following actions to prevent or minimize land pollution as defined in Neb. Rev. Stat. § 81-1502(19):

- a. maintain compliance with all daily cover requirements of Title 132;
- b. cease the use of any unapproved daily cover materials at the MSWLF;
- c. conduct and record a minimum number of random load inspections as required by Title 132, Chapter 3, 004.06 and Respondent's Permit; and
- d. control and collect windblown litter, as required by Title 132, Chapter 3, 004.03 and 004.17A.

27. By March 1, 2023, Respondent agrees to submit a written plan to achieve compliance with the violations alleged herein. The larger written Compliance Plan shall consist of the following three (3) sections:

- a. A plan to reduce the size of the working face to the smallest practical area. The plan must consist, at a minimum, of the following elements:
  - i. the current location of each working face indicated on an aerial map or aerial image of the MSWLF;

- ii. the current surface area of each working face measured in square feet or square meters;
  - iii. the proposed surface area and location of each working face indicated on an aerial map or aerial image of the MSWLF to be achieved on or before May 1, 2023; and
  - iv. the proposed surface area and location of each working face to be achieved on or before August 1, 2023, at which time the working face shall be in the smallest practical area and in compliance with Title 132, Chapter 3, 004.17D.
- b. A plan to comply with daily cover requirements. The plan must consist, at a minimum, of the following elements:
  - i. A complete list of all approved and unapproved daily cover materials in use at the MSWLF since May 2019 and their dates of use by month and year;
  - ii. For all unapproved daily cover materials used at the MSWLF since May 2019, Respondent agrees to calculate and report the total volume or weight used as daily cover for each material in tons and provide scale tickets, accounting or billing records, or other such documentation to support the calculated total volume or weight of unapproved daily cover used at the MSWLF for the time period from May 2019 to the present;
  - iii. For any unapproved daily cover materials Respondent intends to resume using only after receiving NDEE approval, Respondent agrees to submit a written alternative cover request and demonstration plan meeting the requirements of Title 132, Chapter 3, 004.17B2; and

- iv. If any alternative cover requests are submitted by Respondent and approved by NDEE pursuant to the preceding subparagraph, Respondent agrees to include the approved alternative daily cover materials in its next MSWLF permit renewal application.
- c. In addition to 6" of daily cover, a plan to cover all areas requiring 12" of intermediate cover and establish vegetative cover. The plan must consist of the following elements:
  - i. the current location of each area requiring intermediate cover indicated on an aerial map or aerial image of the MSWLF;
  - ii. the current surface area of each area requiring intermediate cover in square feet or square meters;
  - iii. the proposed surface area and location of each area requiring intermediate cover indicated on an aerial map or aerial image of the MSWLF to be achieved on or before May 1, 2023;
  - iv. the proposed surface area and location of each area requiring intermediate cover indicated on an aerial map or aerial image of the MSWLF to be achieved on or before August 1, 2023, at which time all areas requiring intermediate cover shall be covered with 12" of intermediate cover in compliance with Title 132, Chapter 3, 004.13; and
  - v. a description of the vegetative cover to be established, measures to be taken to promote successful establishment of vegetative cover (hydroseeding, irrigation, seed blankets, etc.) and the date by which seeding of vegetative cover is to be completed.



28. Upon NDEE review and approval of the written Compliance Plan required by paragraph 27, Respondent agrees to immediately implement all actions and activities under the Plan by the deadlines specified therein.

29. By the 10th day of the month following NDEE's approval of Respondent's written Compliance Plan, Respondent agrees to submit a "Monthly Compliance Report" summarizing Respondent's ongoing progress implementing the Compliance Plan. The Monthly Compliance Report shall be submitted until such time as: 1) the working face(s) has been reduced in surface area to the smallest practical area, 2) any alternative daily cover demonstrations are completed and submitted for approval, and 3) all areas requiring intermediate cover have been covered with 12" of intermediate cover, in addition to 6" of daily cover. At a minimum, the Monthly Compliance Report shall contain the following information: 1) the current surface area of the working face(s), 2) the current surface area of any remaining areas requiring intermediate cover, and 3) a description of the performance of any alternative daily cover materials being demonstrated and requested for approval under Title 132, Chapter 3, 004.17B2.

30. Upon receipt of Respondent's Monthly Compliance Report, NDEE shall review and approve the report or respond with questions, comments, or required revisions within fourteen (14) days of receipt. Respondent shall respond to NDEE's questions, comments, or required revisions within fourteen (14) days of notice by NDEE.

31. Submittals to the Department under this Order, including Monthly Compliance Reports, shall refer to FID #62746 and shall be sent in paper form to:

Jeffery Edwards  
Waste Compliance Section  
Nebraska Department of Environment and Energy  
P.O. Box 98922  
Lincoln, NE 68509-8922

32. Alternatively, Respondent may submit its Monthly Compliance Report or any other submittals under this Order in electronic form and following instructions in the NDEE guidance document titled, "Electronic Document Submittal to NDEE", which has been provided to Respondent by NDEE.

## **VI. SATISFACTION AND COMPLIANCE WITH OTHER LAWS**

33. Respondent shall perform all actions required by this Consent Order in accordance with all applicable local, state, and federal laws, regulations and permits.

## **VII. RESERVATION OF RIGHTS**

34. Nothing in this Consent Order shall be construed to limit the power and authority of the NDEE to take or order any action necessary to protect public health, welfare, or the environment or to enforce any provision of NEPA, ISWMA, and any rules, regulations, orders, or permits issued pursuant to NEPA or ISWMA. The parties have agreed to address the violations alleged herein through this Consent Order under a mutual expectation that all compliance issues described herein are to be resolved by this Consent Order.

## **VIII. NEGATION OF AGENCY RELATIONSHIP**

35. Nothing in this Consent Order shall be construed to create, either expressly, or by implication, the relationship of agency between NDEE and Respondent.

## **IX. AMENDMENT**

36. This Consent Order may be modified and amended in writing by mutual agreement of NDEE and Respondent.

## **X. EFFECTIVE DATE**

37. This Consent Order shall become effective on the date it is signed by the NDEE Director or designee.

#### **XI. SATISFACTION AND TERMINATION OF CONSENT ORDER**

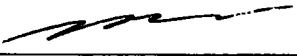
38. At the time of submittal of Respondent's final Monthly Compliance Report pursuant to the terms and conditions of paragraph 29, Respondent shall notify NDEE in writing that the compliance schedule contained herein has been completed. Upon Respondent's notice of completion, NDEE shall have 60 days to inspect Respondent's MSWLF to confirm completion. If NDEE's inspection confirms completion of the compliance schedule herein, the terms of this Consent Order will be satisfied and the Director shall issue a case "Satisfaction Order" within 60 days of inspection. If NDEE's inspection does not confirm completion of the compliance schedule herein, NDEE shall provide written notice to Respondent within 14 days of inspection describing the remaining compliance actions necessary to achieve completion and Respondent shall have 60 days from the time of NDEE notice to comply.

#### **XII. SEVERABILITY**

39. If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

### XIII. SIGNATURES

40. For Respondent City of Kearney, NE:

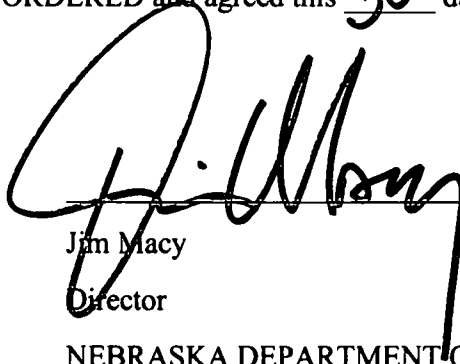
  
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Michael W. Morgan, City Manager

Date: 1/27/23

41. For NDEE:

IT IS SO ORDERED and agreed this 30<sup>th</sup> day of January, 2023.

  
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Jim Macy  
Director

NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY